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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Access Charge Reform

)
) CC Docket No. 96-262
)

Complete Detariffing for Competitive
Access Providers and Competitive Local
Exchange Carriers

) CC Docket No. 97-146
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COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES

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SUMMARY

In this proceeding, the Commission has expressed concern over the impact of the “Filed Rate Doctrine” – specifically, the Commission noted that some CLECs could set access charges at unreasonable levels and enforce payment through their federal tariffs. The Commission sought comment on whether it could rely on mandatory detariffing of CLEC access charges as a means of eliminating such concerns, and most of the industry commenters argued that mandatory detariffing would not be appropriate. ALTS continues to oppose mandatory detariffing; however, we recognize the Commission’s concerns and therefore submit a proposal that would address those concerns through less drastic means than a complete mandatory detariffing regime.

In light of the increase in litigation over these issues in the last year, ALTS appreciates that the Commission must consider regulatory action that accomplishes several different goals:

1. Ensure reasonable CLEC access charge levels,
2. Prevent unlawful self-help and harassing litigation by large carriers, and
3. Ensure that all carriers retain the ability to provide service efficiently and economically.

The proposal described in these comments would achieve these goals, and ALTS respectfully requests that, if the Commission determines that regulatory action is necessary, it adopt rules to put this proposal into effect rather than mandate detariffing of all CLEC interstate access charges.

The Guaranteed Reduced Exchange Access Tariffs (“GREAT”) Proposal described in these comments contains three components: First, a provision to set a maximum level, or “ceiling,” of 2.5¢ per minute for the first year, at or below which CLECs will be able to maintain tariffed access charges. Second, a provision that CLECs that charge access rates in excess of the

ceiling will be subject to mandatory detariffing. Third, a provision to lessen the likelihood that CLECs will be subject to unlawful self-help and harassing litigation by large interexchange carriers. Based on the results of the Report on CLEC Cost Issues and Survey Of CLEC Interstate Access Rates, prepared by QSI Consulting and appended as Attachment 1, adoption of the GREAT Proposal would result in average reductions of about 60% – from 4.27¢ to 2.5¢ – in the average rates charged to IXC's by CLECs and would provide for further reductions on an annual basis. This bifurcated detariffing scheme would serve the public interest by considerably reducing CLEC access charges, promoting regulatory certainty, deterring collection action litigation, and relieving the regulatory burden borne by the Commission, while allowing the industry to retain the efficiencies that accrue by providing service through federal tariffs.

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COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services (“ALTS”), pursuant to the Public Notice (“Notice”) in the above captioned proceedings, released December 7, 2000, hereby files its comments to provide additional information regarding competitive local exchange carrier (“CLEC”) interstate access charges.

I. INTRODUCTION

In this proceeding, the Commission has expressed concern over the impact of the “Filed Rate Doctrine” – specifically, the Commission noted that some CLECs could set access charges at unreasonable levels and enforce payment through their federal tariffs. The Commission sought comment on whether it could rely on mandatory detariffing of CLEC access charges as a means of eliminating such concerns, and most of the industry commenters argued that mandatory detariffing would not be appropriate. ALTS continues to oppose mandatory detariffing;

however, we recognize the Commission's concerns and therefore submit a proposal that would address those concerns through less drastic means than a complete mandatory detariffing regime.

In its earlier comments in this proceeding, ALTS acknowledged that the Commission may rightly be concerned over the possibility that some CLECs could set access charges at unreasonable levels. ALTS posited that, if the Commission found that some regulatory action were necessary to protect against unreasonable access charges, the establishment of a "bellwether" rate level – under which CLEC access charges would be deemed reasonable – could be a practical solution. ALTS and other commenting parties noted that this limited form of regulation would be minimally burdensome, while providing substantial benefits to the industry. In particular, this approach would keep transaction costs low and provide regulatory certainty that would eliminate litigation.

In the interval since the Commission first received comments on this issue, another significant development involving CLEC access charges has occurred. Specifically, collection actions have been filed against two of the largest interexchange carriers ("IXCs") – AT&T and Sprint – that have engaged in widespread self-help by simply refusing to pay for access services they have obtained from CLECs.¹ The first litigation in this matter was a Formal Complaint proceeding heard by the Enforcement Bureau in *MGC v. AT&T*.² On July 16, 1999, the Bureau ruled in favor of MGC, finding that AT&T acted unlawfully in practicing self-help, and that

¹ The two IXCs have taken different approaches to their self-help remedies. AT&T has refused to pay any invoiced charges for originating access, and more recently has started to refuse to pay terminating access as well. Sprint pays CLECs at the rate that has been tariffed by the dominant ILEC in a given service territory, withholding invoiced amounts in excess of the ILEC rate.

² See *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999).

AT&T could not unilaterally withhold payment for access services that it obtained from a CLEC.

That decision was subsequently affirmed by the full Commission.³

Since that time, several other actions have been – and are being – litigated, both before the Commission and federal courts. A coalition of 14 CLECs has filed a collection action against AT&T and Sprint in the Federal Court for the Eastern District of Virginia, which action is pending.⁴ Individual CLECs have filed collection actions against AT&T in Federal Courts in North Carolina⁵ and the District of Columbia,⁶ and Formal Complaints have been filed against Sprint⁷ and AT&T⁸ before the Commission. Sprint filed a Formal Complaint against a CLEC, arguing that its rates were excessive, which complaint was dismissed by the Commission on October 13, 2000.⁹ In addition, there have been several additional federal court actions that have been settled.

In light of these developments over the last year, ALTS appreciates that the Commission must consider regulatory action that accomplishes several different goals:

1. Ensure reasonable CLEC access charge levels,
2. Prevent unlawful self-help and harassing litigation by large carriers, and

³ See *MGC Communications, Inc. v. AT&T Corp.*, 15 FCC Rcd 208 (1999).

⁴ *Advantel, LLC v. AT&T Corp.*, Civil Action 00-643-A (E.D. Va. filed Apr. 17, 2000); *Advantel, LLC v. Sprint Communications Co. L.P.*, Civil Action 00-1074-A (E.D. Va. filed Apr. 17, 2000).

⁵ *U.S. LEC of Ala. v. Sprint Communications Co. L.P.*, 00-CV-84, (W.D.N.C. filed Feb. 25, 2000).

⁶ *Allegiance Telecom, Inc. v. AT&T Corp.*, 00-CV-679 (D.D.C. filed Mar. 30, 2000); *Allegiance Telecom, Inc. v. Sprint Communications Co. L.P.*, 00-CV-680, (D.D.C. filed Mar. 30, 2000).

⁷ *MGC Communications, Inc. v. Sprint Communications Co. L.P.*, File No. EB-99-MD-033 (filed Dec. 3, 1999); *Time Warner Telecom, Inc. v. Sprint Communications Co. L.P.*, File No. EB-00-MD-04 (filed Mar. 16, 2000).

⁸ *U.S. TelePacific Corp. v. AT&T Corp.*, File No. EB-00-MD-010 (filed June 16, 2000).

⁹ See *Sprint Communications Co. L.P. v. MGC Communications, Inc.*, ___ FCC Rcd ___, 2000 FCC LEXIS 5427, (Oct. 13, 2000) (“*Sprint v. MGC*”).

3. Ensure that all carriers retain the ability to provide service efficiently and economically.

The proposal described below achieves these goals, and ALTS respectfully requests that, if the Commission determines that regulatory action is necessary, it adopt rules to put this proposal into effect rather than mandate detariffing of all CLEC interstate access charges.

II. THE “GUARANTEED REDUCED EXCHANGE ACCESS TARIFFS” PROPOSAL

In response to the concerns discussed above, ALTS hereby submits its proposal for assuring reasonable CLEC access charges while protecting CLECs from unlawful self-help and harassing litigation. The Guaranteed Reduced Exchange Access Tariffs (“GREAT”) Proposal contains three components: First, a provision to set a maximum level, or “ceiling,” at or below which CLECs will be able to maintain tariffed access charges. The establishment of such a ceiling is intended to ensure the wide availability of reasonable access charges, while allowing the industry to retain the efficiencies that accrue by providing service through federal tariffs. Second, a provision that CLECs that charge access rates in excess of the ceiling will be subject to mandatory detariffing. Third, a provision to lessen the likelihood that CLECs will be subject to unlawful self-help and harassing litigation by large interexchange carriers.

These three provisions are summarized as follows:

1. *The Commission should adopt a “ceiling” rate level for the permissive detariffing of CLEC access charges*
 - a) CLECs would set all tariffed rates at or below the ceiling for permissive detariffing
 - As per the Commission’s current rules and established precedent, such rates would be presumed reasonable
 - Any carrier wishing to oppose the tariffed rate would bear the burden of establishing a prima facie case that rates are unreasonable
 - For CLECs that currently set their tariffed rates at levels below the ceiling level, the CLEC would bear the burden of justifying increases to such rates if the CLEC opts to increase rates to the ceiling level

- b) For CLECs serving Tier 1 markets:
- Starting “ceiling” rate level would be 2.5¢ per minute
 - Rate will include all switching and transport components
 - Rates will be the same for originating and terminating access
 - Following adoption by the Commission, CLECs will be given 6 months to amend their tariffs to put this rate into effect
 - Ceiling rate would phase down by 0.2¢ per year
 - After three years, the Commission may revisit this plan if it determines the Proposal is not producing reasonable rates
- c) For CLECs serving markets served by rural ILECs:
- The permissive detariffing level will be the ILEC tariffed interstate access rate in that area
 - This rate will include all switching and transport components and any other access-related revenues that are otherwise not accounted for in the switched access rates
 - Following adoption by the Commission, CLECs will be given 6 months to amend their tariffs to put this rate into effect
- d) For CLECs serving Tier III and/or Tier IV markets (i.e., high-cost markets) served by Tier 1 ILECs:
- In view of the substantially higher costs associated with breaking into Tier III and Tier IV markets, the Commission should consider exempting these CLECs from any mandatory detariffing requirements, or in the alternative, consider adopting a higher permissive detariffing ceiling rate coupled with a significantly slower phase down period to address the Commission’s recognition in the Public Notice that competition is more tenuous, and will take longer to develop, in high-cost RBOC markets.¹⁰

2. *Mandatory detariffing would apply to CLECs that charge in excess of the CLEC permissive detariffing ceiling*

- This bifurcated detariffing regime would:
 - Preserve the integrity of contractual rates previously negotiated between CLECs and IXCs at rates above the ceiling
 - Allow CLECs setting rates below the mandatory detariffing level to avoid the cost and uncertainty of negotiating access contracts
 - Avoid the costs associated with extended rulemakings, cost justification and litigation for CLECs, IXCs and the Commission
 - Provide certainty to CLECs and IXCs as well as investors and financial markets

¹⁰ See FairPoint Communications’ Comments, filed December 21, 2000, in CC Docket No. 96-262.

3. *The Commission should clarify interconnection and payment obligations of carriers*

- The Commission should affirm that self-help refusal to pay lawfully filed tariff rates is impermissible
- The Commission should expand on the ruling in *MGC v. AT&T* to define the terms under which carriers may block traffic and terminate service to end user customers of CLECs that charge over the permissive detariffing ceiling.
- The Commission should clarify that carriers must maintain sufficient trunking capacity to handle traffic volumes

III. ESTABLISHING A CEILING FOR PERMISSIVE DETARIFFING OF CLEC ACCESS CHARGES WOULD FURTHER THE PUBLIC INTEREST AND IS AN OPTION FULLY SUPPORTED BY ECONOMIC AND POLICY CONSIDERATIONS

The GREAT Proposal would ensure reasonable rate levels for CLEC access charges and provide certainty for IXC's, while protecting CLECs from unlawful refusals to pay for services provided and providing the industry with the continued economies and efficiencies of tariffing. Moreover, it will do so in a manner that is fully consistent with past Commission precedent, economic theory, and sound public policy. The following section briefly discusses these latter issues and summarizes arguments contained in the Report on CLEC Cost Issues and Survey Of CLEC Interstate Access Rates, prepared by QSI Consulting and appended to this filing as Attachment 1.

A. The Permissive Detariffing Ceiling Would Serve the Public Interest By Considerably Reducing CLEC Access Charges, Promoting Regulatory Certainty, Deterring Litigation, and Relieving the Regulatory Burden Borne By the Commission

By targeting 2.5¢ per minute as the ceiling rate for permissive detariffing, the GREAT Proposal effects considerable reductions in access charges currently tariffed by many CLECs. Indeed, only this summer, the Commission dismissed a Section 208 complaint filed by Sprint against a CLEC charging 7.7¢, finding that Sprint failed to show that access charges above the

ILEC rate were per se unreasonable.¹¹ Moreover, local service affiliates of two of the largest IXC's currently charge access rates well in excess of the ceiling rate proposed in this filing: ACC National Telecom Corp., an affiliate of AT&T, currently charges access rates of 9¢ per minute, and Sprint Spectrum, the wireless local service affiliate of Sprint, sets its equivalent of access charges at the current NECA rate of approximately 3.5¢ per minute.

As described in Attachment 1, QSI Consulting recently performed a survey of the interstate access rates for 36 participating CLECs.¹² QSI compiled all rate elements related to access services and calculated a composite rate for each CLEC as well as an average composite rate of all participating CLECs. The individual CLEC composite rates ranged from .43¢ on originating and .38¢ on terminating to 7.85¢ on both originating and terminating access, with an average composite rate for all participating CLECs of 4.27¢ on originating and 4.26¢ on terminating. Twenty-nine of the participating CLECs currently charge composite rates above 2.5¢ per minute, thus each of those 29 carriers would considerably reduce their access charges in order to comply with the GREAT Proposal's permissive detariffing ceiling of 2.5¢. Adoption of the GREAT Proposal would result in average reductions of about 60% – from 4.27¢ to 2.5¢ – in the average rates charged to IXC's by CLECs and would provide for further reductions on an annual basis. This level of rate reductions is consistent with that effected by the Coalition for Affordable Local and Long-Distance Service ("CALLS") Settlement, which was adopted by the

¹¹ *Sprint v. MGC*, 2000 FCC LEXIS 5427, ¶ 6.

¹² The following CLEC's access tariffs were included in the survey: ACC National Telecom Corp., Advantel, Advanced Telecom Inc., Allegiance Telecom, Inc., ALLTEL, American Communications Services, Inc., Avista Communications, Inc., BTI, Cablevision Lightpath Inc., Cavalier Telephone, Choice One Companies, Connect Communications Corporation, Consolidated Communications Networks, Inc., Conversent Communications, CTC Exchange Services, CTC Telecom, CTSI, Electric Lightwave, Inc., FairPoint Communications, Focal Communications Corporation, Gabriel Communications, ICG Telecom Group, Intermedia, Mpower Communications, Net2000, North County, Pac-West Telecom, Inc., Teligent, . . . *continued*

Commission in May, 2000, and with the reductions proposed in the Multi-Association Group (“MAG”) Plan, which is now pending before the Commission. Furthermore, the GREAT Proposal contains no make-whole provisions as are incorporated into both the CALLS and MAG plans – under this Proposal, most CLECs would make considerable reductions in their access charges with no mechanism to recoup those reductions in revenue.

Moreover, as discussed above, the last two years have witnessed widespread reliance on unlawful self-help by AT&T and Sprint, which has sparked extensive litigation before federal courts and this Commission. This has been a substantial drain on the resources of the Commission and the CLEC community. Adoption of the GREAT Proposal would bring much-needed regulatory certainty to an area that has become increasingly litigious.

B. The Establishment of a Ceiling for Permissive Detariffing Is Fully Consistent with Economic Theory and Prior Commission Decisions

CLEC networks have cost characteristics that differ from ILEC networks and that often lead to higher per-unit costs. This does not reflect inefficiencies on the CLECs’ parts, but rather reflects the fact that, unlike ILECs, CLECs do not enjoy ubiquitous, embedded networks, the costs of which have been largely depreciated over the years. The attached QSI Report discusses some of the major cost differentiators between ILEC and CLEC networks. Below is a summary of cost factors that typically reflect higher network costs for CLECs, particularly in early stages of market entry:

- Lower utilization rates for switches and transport. CLECs incur costs the same as or higher than ILECs when they purchase switches and some transport. CLECs differ from ILECs, however, in their ability to use the full capacity of the switches and transport immediately upon installation. ILECs generally realize high “fill factors” as soon as they install new switches or transport facilities, which enable them to spread

The One Choice Companies, Time Warner Telecom, Trivergent Communications, US LEC Corp., US TelePacific Corp., Winstar, XO Communications, Z-Tel Communications, Inc.

costs over a larger usage base, and to realize lower per-unit costs. CLECs, on the other hand, are growing their customer base, and have lower levels of demand – and therefore utilization – when they install switches and transport. This leads to higher per-unit costs for CLECs. The Commission expressly acknowledged this cost difference in its *UNE Remand Order*.¹³

- Higher use of transport/longer lengths of haul. CLEC customers tend to be located farther from CLEC facilities than ILEC customers are from ILEC facilities. As a result, CLECs perform greater amounts of “backhauling” to and from switching facilities. In addition, their networks typically are characterized by longer lengths of haul than ILECs. The Commission expressly acknowledged this cost difference in its *UNE Remand Order*.¹⁴
- Less dense customer base. Even CLECs that provide service to customers located in densely populated urban areas do not provide service to *all* customers in that service area. As a result, the distribution of CLEC customers – even in urban areas – tends to resemble a typical customer distribution pattern in ILEC suburban or rural areas. Just as ILEC costs for serving customers in less densely populated areas are higher, CLECs find that the costs of serving their more widely distributed customer base are higher.
- Higher ratio of Traffic-Sensitive to Non-Traffic-Sensitive Costs. CLEC networks are not deployed in the same hierarchical configuration as ILEC networks. Rather, CLECs frequently deploy SONET nodes and transport – which reflect traffic-sensitive costs – to perform many of the functions performed by ILEC Class 5 switches, which reflect predominantly non-traffic sensitive costs. This higher level of traffic sensitive costs justifies higher levels of cost recovery through usage-sensitive charges.
- Collocation costs. It goes without saying that collocation is a cost that CLECs must incur and that ILECs do not. This additional cost contributes to higher charges. The Commission expressly acknowledged this cost difference in its *UNE Remand Order*.¹⁵
- Unbundled Network Element costs. CLECs similarly incur higher costs than ILECs when they purchase unbundled loops and other UNEs from ILECs. Under the Commission’s TELRIC pricing rules, UNEs are by definition priced above ILEC costs, and impose additional costs on CLECs that ILECs do not incur. The

¹³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, (“*UNE Remand Order*”) ¶¶ 258-61.

¹⁴ *Id.* ¶ 261.

¹⁵ *Id.* ¶¶ 261, 264.

Commission expressly acknowledged this cost difference in its *UNE Remand Order*.¹⁶

C. The Permissive Detariffing Ceiling Reflects Sound Public Policy

A complete mandatory detariffing scheme that applied only to CLECs, as proposed by the Commission, would unfairly disadvantage CLECs compared to their ILEC competitors and IXCs.¹⁷ ILECs would have the advantage of the convenience and cost savings of filing tariffs for access services while CLECs would be forced to negotiate with every IXC with which they originate or terminate traffic. Moreover, larger IXCs with greater bargaining power would be advantaged during those negotiations. Such a policy would not be in the public interest.

As noted above, adoption of the GREAT Proposal would allow CLECs to enjoy the continued efficiencies of tariffing, while also addressing the IXCs' concerns about unreasonable CLEC access charges. The approach recommended in the Proposal accomplishes this with minimal regulatory involvement, which conserves the resources of both the Commission and the industry. In so doing, adoption of the GREAT Proposal would further the public interest.

¹⁶ *Id.* ¶ 265.


¹⁷ ALTS Comments, filed June 12, 2000, in CC Docket Nos. 96-262, 97-146.

IV. CONCLUSION

For the foregoing reasons, ALTS urges the Commission not to adopt a complete mandatory detariffing scheme of CLEC interstate access services, but to adopt rules to effectuate the GREAT Proposal as described in these comments.

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January 11, 2001

QSI CONSULTING

REPORT ON CLEC COST ISSUES

AND

SURVEY OF CLEC INTERSTATE ACCESS RATES

REPORT ON CLEC COST ISSUES

CLECS' COST STRUCTURES DIFFER SIGNIFICANTLY FROM THE LARGE ILECS' COST STRUCTURES

In comparing the competitive local exchange carriers' ("CLECs") switched access charges to those of the incumbent local exchange carriers ("ILECs"), one should recognize the differences between those two categories of companies. Most importantly, one should be careful not to automatically conclude that a CLEC is inefficient or that its access rates are unreasonable if it charges interexchange carriers ("IXCs") more for originating or terminating traffic than certain large ILECs do.

In a multi-product environment, one cannot evaluate the overall efficiency of a firm by focusing on a single product out of an array of the firm's product offerings. To properly explain differences in switched access rate levels, one should, at a minimum, consider the differences between the CLECs and ILECs network architectures and cost structures.

CLECS USE OPTIMALLY EFFICIENT FACILITIES BUT GENERALLY EXPERIENCE LOWER LEVELS OF UTILIZATION FOR SWITCHING AND TRANSPORT FACILITIES

In general, CLECs use state-of-the-art, optimally efficient facilities. As discussed above, these facilities consist of state-of-the-art switches and transport facilities, constructed to serve a target customer base consistent with the CLEC's specific market entry strategy.

As discussed previously, CLECs typically purchase large switches, such as a Lucent 5ESS, or Nortel 500, capable of serving tens of thousands of customers. Likewise, the SONET facilities constructed to transport traffic to end-users and other carriers are often capable of carrying large amounts of traffic. However, most CLECs must install these facilities substantially before they are able to acquire sufficient numbers of customers to achieve levels of utilization for which the facilities are designed. This means that over the ramp-up period, the utilization of CLECs facilities is substantially below full capacity.

This situation contrasts sharply with that of the ILECs. Often, when an ILEC places a new digital switch, the company does so to replace an old analog switch that is already serving a large number of customers. In fact, old analog switches, such as the 1AESS, may serve large numbers of customers, comparable to the number that a fully loaded digital switch serves (though obviously the analog switch cannot provide the same functionalities). This means that from the moment a digital switch is installed, the ILEC will experience near full capacity utilization on such switches. The ILEC is also capable of achieving high

utilization rates on existing digital switches in wire centers that are experiencing growth. In such situations, the ILEC will often grow the digital switch by installing additional switch modules in the same central office, or it will place remotes that are served by the existing host switch. In either case, the overall level of switch utilization will be high. The same is true for the ILECs' transport facilities. Here too, ILECs reap the benefit of having a mature network that serves a large, existing customer base so that new facilities can be added incrementally as new demand is anticipated to materialize.

Thus, even though CLECs may employ optimally efficient, state-of-the-art facilities, they are likely to experience average utilization rates -- over the economic life of the facilities -- below those enjoyed by the larger ILECs.

CLECS TEND TO SERVE A SPARSE CUSTOMER BASE

By and large, CLECs will operate in urban, or sub-urban environments that are densely populated. However, while a high population density in these areas translates into a dense customer base for the large, urban ILECs, the CLECs may be faced with customers that are spread-out over a fairly large area. Once CLECs enter a particular geographic market, they often tend to serve customers over an area that is roughly comparable to the local calling areas of the ILEC. However, given the limited scope of their facilities, among other factors, they will only serve a fraction of the customers in such areas. Thus, if the CLEC's customer base is expressed on a customer-per-square-mile basis, it is sparse relative to that of the urban ILECs.

CLECS CUSTOMERS TEND TO BE LOCATED AT A GREATER DISTANCE FROM THE CLEC SWITCHING FACILITIES

Some of the shortest loops for ILECs are found in their densely populated urban serving areas. However, even in those densely populated areas, CLEC customers tend, on average, to be located at substantial distances from the CLEC's serving central office. Once again, the distributed network architecture employed by CLECs allows customers at great distances from the central office to be connected via transport facilities. The situation is not substantially changed when, under the provisions of the Telecommunications Act of 1996, the CLEC uses the ILEC's unbundled loop facilities. When unbundled loops are used, the CLEC still needs to extend those loops with transport facilities connecting their own switch to their collocation location in the ILEC's central office.

CLECS MAY HAVE A GREATER RATIO OF TS-TO-NTS COSTS

As discussed previously, CLECs do not have a typical line-side to their switching facilities. Instead, CLECs tend to use SONET nodes collocated in multiple ILEC central offices in order to serve their customers that may be spread across an entire state or LATA while using only a single, integrated end office and tandem switching platform. That is, the equivalent of the ILEC's main distribution frame (MDF) and the switch line-side is for the CLECs found in the collocation locations where the SONET nodes connect to their end-user lines. Unlike ILECs, many CLECs have few, if any, line-cards in their Class 5 switches.

Given that a large portion of the non-traffic sensitive (NTS) costs of a switch stem from the line-side of the switch, a larger percentage of the CLEC switching costs may be traffic sensitive (TS). The percentage of TS costs in originating and terminating long distance calls may be further increased due to the fact that, as discussed, the CLEC's forward-looking, state-of-the-art networks substitute additional transport facilities, with usage sensitive costs, for switching facilities. Thus, compared to the ILECs, the CLECs will have a greater ratio of TS-to-NTS costs.

In sum, lower levels of utilization, a sparse customer base at a greater distance from the central office, and a greater ratio of TS-to-NTS costs, all – individually, but certainly in combination – suggest that reasonable switched access charges for some CLECs could be in excess of those for the ILECs, particularly in the early stages of their network deployment. However, this in no way suggests that those CLECs are inefficient or otherwise charge unreasonable rates.

CERTAIN OF THE CLECS' COST CHARACTERISTICS ARE SIMILAR TO THOSE OF THE SMALLER ILECS

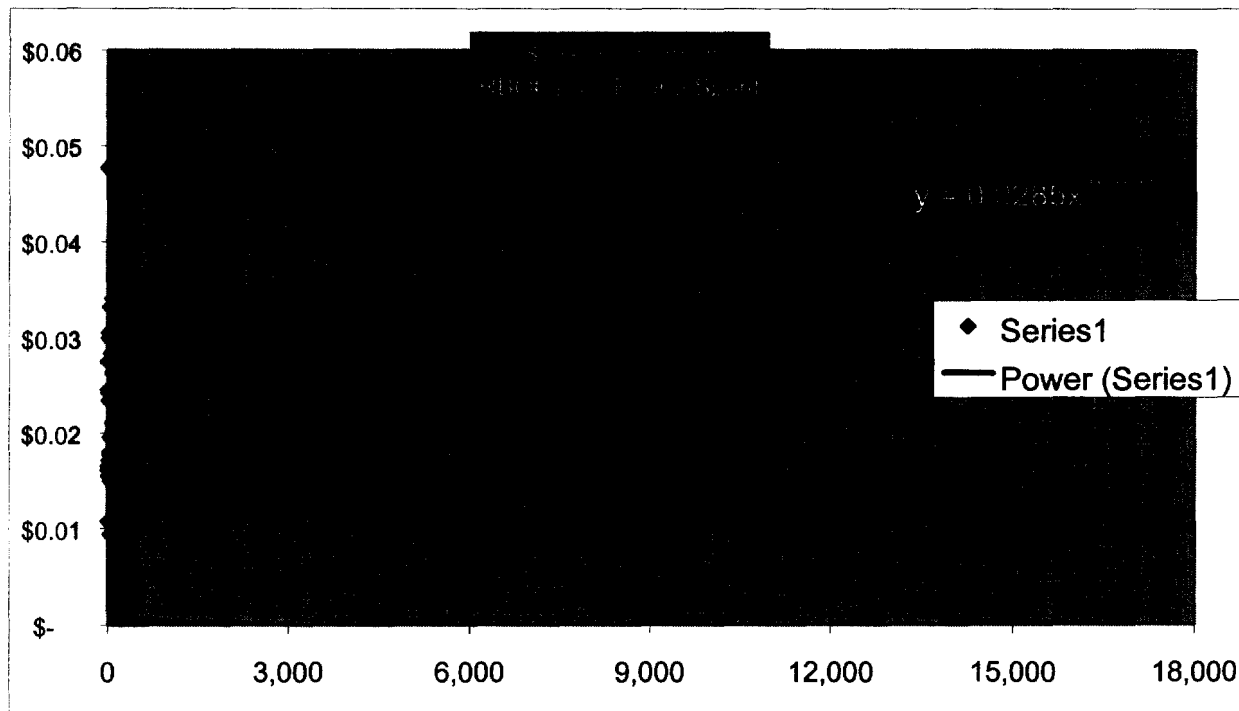
As discussed above, there are a number of reasons for why the CLECs cost structure is different from that of the larger ILECs. Many of those reasons, though not all, have to do with the fact that the CLECs, at this stage of their development, lack the economies of scale enjoyed by larger ILECs. In this regard, CLECs have more in common with smaller ILECs, such as the NECA companies and independents.

Obviously, the comparison between small rural ILECs and CLECs that operate mostly in urban areas has its limitations. Nevertheless, there are a number of significant similarities that are worth noting. The similarities between CLECs and smaller ILECs, such as NECA companies, are the following:

- Both CLECs and smaller, rural LECs may have lower levels of switch utilization. Due to the lumpiness of capital, neither type of company may have a sufficiently large customer base to fully utilize switch facilities.
- CLECs, like smaller, rural LECs with longer than average loops, serve customers at great distances from their switching facilities.
- Both CLECs and smaller, rural LECs may serve a sparse customer base. This is true even though the CLECs tend to operate in densely populated areas as long as the customer base is expressed on a number-of-customer-per-square-mile basis.

Thus, in some significant regards, the CLECs' cost characteristics are comparable to those of smaller, rural LECs, such as the NECA companies.

While the data are not unambiguous, there appears to be a pattern correlating the level of switched access charges to the size of the ILEC's operations, measured in terms of customer access lines. The graph below shows how the ILECs' (RBOCs, GTE and Sprint) interstate switched access charges are correlated to the size of the ILECs, measured in number of access lines served.



Graph: Terminating Interstate Access Rates plotted against Access Lines for RBOCs, GTE and Sprint

Obviously, there are many factors influencing the determination of interstate switched access charges. Nevertheless, it appears that the larger the company's operations, the lower are its interstate switched access charges. This suggests that the economies of scale enjoyed by the RBOCs (because of the maturity of their networks and their larger, more densely populated serving areas) facilitate lower switched access charges.

This relationship between size and the level of costs has also been noted by the FCC itself:

The Commission has recognized that smaller telephone companies have higher local switching costs than larger incumbent local exchange carriers (ILECs) because the smaller companies cannot take advantage of certain economies of scale.¹⁸

¹⁸ *National Exchange Carrier Assn., Inc. proposed Modifications to the 1998-99 Interstate Average Schedule Formulas*, 13 FCC Rcd 24225, 1998 FCC LEXIS 6539 (Dec. 22, 1998) at n. 6.

SURVEY OF CLEC INTERSTATE ACCESS RATES

METHODOLOGY

CLEC Interstate access tariffs were provided to ALTS and the law firm of Kelley Drye & Warren for inclusion in the survey. Each tariff was reviewed for all rate elements regarding interstate access charges. The following is a listing of the rate elements that are included:¹⁹

- Carrier Common Line (originating)
- Carrier Common Line (terminating)
- Local End Office Switching
- Interconnection Charge
- Information Surcharge
- Tandem Switched Transport Termination (fixed)
- Tandem Switched Transport Facility (per mile)
- Tandem Switching

After identifying the tariffed rate for the appropriate rate elements for each CLEC,²⁰ composite rates for originating and terminating charges were developed for each CLEC by summing those rate elements.

An industry study average was calculated by averaging the composite rates of all study CLECs' originating and terminating services.

RESULTS

Thirty-six CLECs participated in the survey. The composite rates ranged from .43¢ on originating access and .38¢ on terminating access to 7.85¢ on both originating and terminating, with an industry study average of 4.27¢ on originating and 4.26¢ on terminating. Twenty-nine of the CLECs surveyed have composite access rates currently above 2.5¢ per minute.

¹⁹ Each CLEC has a slightly different access charge rate structure and hence may not have a rate associated with each rate element identified.

²⁰ Several CLECs reported access charges for several areas (generally states) in their interstate access tariffs. For these companies an overall company average was calculated and that company average was included in the survey.